Board Item 10 pertains to the consideration of adoption of Proposed Final Amendments to both the Water Quality Control Plan for Ocean Waters of California, and the forthcoming Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California to include the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Draft Procedures), and the Proposed Final Staff Report including the Substitute Environmental Documentation (Draft Staff Report). All changes below are to the clean versions of the documents released on March 22, 2019. Additional text is shown in bold **underline** and deletions are shown in bold ~~**strikeout.**~~

On page 13 of the Draft Procedures, lines 479 -480, strike and move language in section IV.D.1.c as follows, and make the corresponding change to page 93 of the Draft Staff Report:

c. Routine and emergency operation and maintenance activities conducted by public agencies, water utilities, or special districts that result in discharge of dredged or fill material to artificial, existing waters of the state ~~**currently used and maintained primarily for**~~:
   i. **currently used and maintained primarily for** one or more of the purposes listed in section II.3.d. (ii), (iii), (iv), (x), or (xi); or
   ii. preserving the line, grade, volumetric or flow capacity within the existing footprint of a flood control or stormwater conveyance facility.

On page 14 of the Draft Procedures, after line 497, add new section IV.D.1.d. as follows, and make the corresponding change on page 93 of the Draft Staff Report:

d. Routine operation and maintenance activities that result in discharge of dredged or fill material to artificially-created waters currently used and maintained primarily for one or more of the purposes listed in section II. 3.d. (i), (ii), (iii), (vi), (vii), (x), or (xi). This exclusion does not apply to the discharge of dredged or fill material to (a) a water of the U.S., (b) a water specifically identified in a water quality control plan, (c) a water created by modification of a water of the state, or (d) a water approved by an agency as compensatory mitigation.

On page 14 of the Draft Procedures, line 502, add language to section IV.D.2.a as follows, and make the corresponding change on page 93 of the Draft Staff Report:

a. Wetland areas that qualify as prior converted cropland (PCC) within the meaning of 33 CFR section 328.3(b)(2). The applicant may establish that the area is PCC by providing relevant documentary evidence that the area qualifies as PCC and has not been abandoned due to five consecutive years of non-**use for** agricultural purposes, or by providing a current PCC certification by the Natural Resources Conservation Service, the Corps, or the U.S. EPA to the permitting authority.

On page 18 of the Draft Staff Report, add the following language to the end of Section 4.9 *Effective Date of the Procedures*:

"The Procedures do not apply to applications that are submitted prior to [insert date that is nine months after approval by the Office of Administrative Law]." was added to the Procedures in an attempt to make it clear that, so long as a dredge or fill discharge application is submitted prior to the effective date of the Procedures, sections IV.A (project applications) and IV.B (Water Board review and approval) do not apply to that application. Instead, project application and Water Board review and approval will follow the policies and procedures in place at the permitting authority prior to the effective date of the Procedures.

This is true whether or not the application is ultimately deemed to be a "complete" application by the Water Board. If the application is so obviously deficient that it is clear that it was submitted prematurely to avoid having to comply with the Procedures, however, then the Water Boards' recourse would be to deny the application without prejudice. The applicant could then finish the application and re-submit it. That resubmission of the application would have to be in accordance with the Procedures if the Procedures have taken effect by the time that the application is re-submitted.

Add the following sentence to the Draft Staff Report in section 6.7, page 72, as the last sentence under 1.b.:

If the Corps does not require an aquatic resource delineation report, an applicant must submit a delineation of all waters, but the delineation need not be verified by the Corps.

On page 5 of the Draft Resolution, add a new item #9 as follows:

Whereas, Water Board staff and agricultural landowners are encouraged to consult with the Natural Resources Conservation Service (NRCS) regarding delineation of wetlands on agricultural lands and any other information that is relevant to the application of the Procedures to agricultural lands.

ED_002551_00004433-00002